

SENATE BILL NO. 152

BY SENATOR BROOME (On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Children's Code Articles 606(A)(5), 623(B) and (C), 661(B),(C) and  
3 (D), 672.1(C)(2) and (3), 675(B)(2), (3), (4), and (5), 679(C) and (D), 695, 696(B),  
4 702(J), 705, 706(B), 776(B), 853, 908(C), the introductory paragraph of 1015(3) and  
5 (k), 1030(2), the introductory paragraph of 1211, to enact Children's Code Articles  
6 623(D) and (E), 661(E), 675(B)(6), 679(E) and (F), 696(C), 706(C), and 908(D), and  
7 to repeal Children's Code Article 730(10), relative to continuous revision of the  
8 Children's Code; to provide for the grounds which must be alleged in a child in need  
9 of care proceeding; to provide relative to notice and who has the right to be heard at  
10 a continued custody Child in Need of Care ("CINC") hearing; to provide for who  
11 shall be present at an adjudication hearing; to provide for a reunification efforts  
12 determination; to provide for the purpose and contents of the case plan; to provide  
13 for notice and who may be present at the disposition hearing; to provide for who  
14 shall receive notice of the right to appear and be heard at a case review hearing; to  
15 provide for the rights of the parties at a case review hearing; to provide for  
16 permanency hearings; to provide for notice of, the right to be heard, and the rights  
17 of the parties at permanency hearings; to provide for permanency planning reports;  
18 to provide for the effect of a parent's non-appearance at a delinquency hearing; to  
19 provide for the juvenile's care and treatment by the department; to provide for the  
20 grounds for termination of parental rights; to provide for suspension of the right of  
21 voluntary surrender of parental rights by initiation of a termination proceeding; to  
22 provide for the final decree at an adoption hearing; to provide for the grounds upon  
23 which an allegation that a family is a Family in Need of Services (or "FINS") must  
24 be based; and to provide for related matters.

25 Be it enacted by the Legislature of Louisiana:

26 Section 1. Children's Code Articles 606(A)(5), 623(B) and (C), 661(B), (C) and (D),  
27 672.1(C)(2) and (3), 675(B)(2), (3), (4), and (5), 679(C) and (D), 695, 696(B), 702(J), 705,

706(B), 776(B), 853, 908(C), the introductory paragraph of 1015(3) and (k), 1030(2), and the introductory paragraph of 1211 are hereby amended and reenacted and Children's Code Articles 623(D) and (E), 661(E), 675(B)(6), 679(E) and (F), 696(C), 706(C), and 908(D) are hereby enacted to read as follows:

Art. 606. Grounds; child in need of care

A. Allegations that a child is in need of care must assert one or more of the following grounds:

\* \* \*

(5) The conduct of the parent, either as principal or accessory, constitutes a crime against the child or against any other child of that parent.

\* \* \*

Art. 623. Notice; right to be heard

\* \* \*

B. The notice shall state the ~~day~~ **date**, time, and place of the hearing and inform the recipient of his right to attend and be heard.

C. **A child twelve years of age or older shall be present in court unless his presence is waived by the court upon motion of the child's counsel. A child below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If the child is present in court, he may choose to testify as to his wishes, and the court shall consider his testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents.**

~~C.~~ **D.** If a foster parent, pre-adoptive parent, or relative providing care for the child fails to appear at a hearing, the department shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

**E. The court shall solicit and consider information regarding the care and treatment of the child from any foster parent, pre-adoptive parent, or**

relative providing care for the child who appears for the hearing.

Comments - 2012

(a) Paragraph C complies with Louisiana Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12, which states that, in child abuse and neglect cases, "[t]he child should be present at significant hearings, regardless of whether the child will testify, except when counsel affirmatively waives the child's presence . . . [and] [c]ounsel for a child should decide whether to call the child as a witness considering the child's need or desire to testify." Article 624(E) allows the child and the parents to "be heard on their own behalf," implying their presence. It also reflects the growing national trend for states to grant children the right to be present in court. *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These changes are consistent with the A.B.A. Model Act Governing the Representation of Children in Abuse Neglect, and Dependency Proceedings adopted in August, 2011.

(b) Paragraph E complies with the Safe and Timely Interstate Placement of Foster Children Act of 2006, that requires that "the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, *and a right to be heard in*, any proceeding to be held with respect to the child." 42 U.S.C. 675(5) (G) (emphasis added). In particular, it clarifies the foster parent or caretaker's right to be heard. It also emphasizes the role of the child's daily caretaker and the insight that the caretaker can provide. See Article 695.

\* \* \*

Art. 661. Presence at adjudication hearing; exclusion of witnesses

\* \* \*

**B. A child twelve years of age or older shall be present in court unless his presence is waived by the court upon motion of the child's counsel. A child below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If the child is present in court, he may choose to testify as to his wishes, and the court shall consider his testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents.**

~~B. C.~~ The court shall not admit any other person into the courtroom unless the court has determined that the person has a proper interest in or is necessary to the proceedings.

~~C. D.~~ On its own motion the court may, and on the request of a party the court shall, order that the witnesses, other than parties, be excluded from the courtroom or from a place where they can see or hear the proceedings, and refrain

from discussing the facts of the case with anyone other than counsel in the case. In the interest of justice, the court may exempt any witness from its order.

~~D.~~ E. Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

Comments - 2012

(a) See Comment (a) to Article 623 for Paragraph B's compliance with Louisiana Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

(b) Paragraph A of this Article already allows the child to be present at the adjudication hearing, and Paragraph E (formerly Paragraph D) provides the appropriate safeguards for restricting the child from the courtroom if the court believes the child's presence will have an adverse effect on him. This addition serves to accommodate and clarify the rights of the child. It also reflects the growing national trend for states to grant children the right to be present in court. *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These changes are consistent with the A.B.A. Model Act Governing the Representation of Children in Abuse Neglect, and Dependency Proceedings adopted in August, 2011.

\* \* \*

Art. 672.1. Reunification efforts determination

\* \* \*

C. Efforts to reunify the parent and child are not required if a court of competent jurisdiction has determined that:

\* \* \*

(2) The parent has committed murder or manslaughter of another child of the parent **or any other child** or has aided or abetted, attempted, conspired, or solicited to commit such a murder or manslaughter.

(3) The parent has committed a felony that results in serious bodily injury to the child or another child of the parent **or any other child**.

\* \* \*

Art. 675. Case plan purpose; contents

\* \* \*

B. The case plan shall at least include all of the following:

\* \* \*

(2) A plan for assuring that the child receives safe and proper care and that

1 services are provided to the parents, child, and foster parents in order to improve the  
2 conditions in the parents' home, facilitate the safe return of the child to his own home  
3 or other permanent placement of the child, or both, and address the needs of the child  
4 while in foster care, including a plan for visitation and a discussion of the  
5 appropriateness of the services that have been provided to the child under the plan.  
6 If the child has been committed to the custody of a person other than the parents, the  
7 plan shall recommend an amount the parents are obligated to contribute for the cost  
8 of care and treatment of their child in accordance with Article 685. When appropriate  
9 for a child ~~age sixteen~~ **fifteen years of age** or older, the plan shall include a written  
10 description of the programs and services which will help the child prepare for the  
11 transition from foster care to independent living.

12 **(3) For a child fifteen years of age or older the plan shall include a**  
13 **written, individualized, and thorough transitional plan, developed in**  
14 **collaboration with the child and any agency, department, or individual**  
15 **assuming his custody, care, or responsibility.**

16 **(a) The transitional plan shall identify the programs, services, and**  
17 **facilities that will be used to assist the child in achieving a successful transition.**  
18 **The transitional plan shall address the needs of the child, including but not**  
19 **limited to education, health, permanent connections, living arrangements, and,**  
20 **if appropriate, independent living skills and employment.**

21 **(b) The department shall ensure that all records in its files relevant to**  
22 **securing needed services in the community in which the child will live shall be**  
23 **immediately transmitted to the appropriate service provider.**

24 ~~(3)~~ **(4)** Documentation of the efforts the agency is making to safely return the  
25 child home or to finalize the child's placement in an alternative safe and permanent  
26 home in accordance with the child's permanent plan. For children whose permanent  
27 plan is adoption or placement in another permanent home, this documentation shall  
28 include child-specific recruitment efforts such as the use of state, regional, and  
29 national adoption exchanges, including electronic exchange systems, to facilitate  
30 orderly and timely in-state and interstate placements. For children whose permanent

plan is guardianship, the documentation shall include the facts and circumstances supporting guardianship, including the reasons that the plan is in the best interest of the child and that reunification with a parent and adoption are not appropriate permanent plans. The documentation shall also address the suitability and commitment of the proposed guardian to offer a wholesome, stable home for the child throughout minority.

~~(4)~~ (5) Assessment of the child's relationships with his parents, grandparents, and siblings, including a plan for assuring that continuing contact with any relative by blood, adoption, or affinity with whom the child has an established and significant relationship is preserved while the child is in foster care. The preservation of such relationships shall be considered when the child's permanent plan is adopted.

~~(5)~~ (6) Documentation of the compelling reasons for determining that filing a petition for termination of parental rights would not be in the best interest of the child, when appropriate.

\* \* \*

Comments - 2012

(a) The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) requires states during the 90-day period immediately prior to the date a child in custody attains eighteen years of age to "provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child [and] includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services." In accordance with best practices, the State of Louisiana has by policy adopted the lower age of fifteen years. The Patient Protection and Affordable Care Act of 2010 (P.L. 111-148) further mandates the provision of information about health care treatment decision-making and specific health care options, including the option to execute a health care power of attorney, health care proxy, or other similar document recognized under state law.

(b) The child's caseworker and other representatives are expected to assist and support the child in developing the personal transitional plan. The child's caregivers should also assist and support the child in developing the plan. Other community and state agencies involved with the child currently or prospectively should also contribute to plan development. Such agencies may include local educational authorities, the Office of Juvenile Justice, the Department of Health and Hospitals, and other child-serving organizations at the community or state level.

(c) The common transitional plan form developed and used by the Department of Children and Family Services and by Youth Services, Office of Juvenile Justice, is available on the website of each agency.

\* \* \*

Art. 679. Notice; presence at disposition

\* \* \*

C. ~~The child need not be present when the court enters a judgment of disposition.~~ A child twelve years of age or older shall be present in court unless his presence is waived by the court upon motion of the child's counsel. A child below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If the child is present in court, he may choose to testify as to his wishes, and the court shall consider his testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents.

D. The department shall give notice of the right to appear at the disposition hearing to any foster parent, pre-adoptive parent, or relative providing care for the child.

~~D. E.~~ E. If a foster parent, pre-adoptive parent, ~~adoptive parent,~~ or relative providing care for the child fails to appear at the disposition hearing, the department shall report to the court whether notice was given, or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

F. The court shall solicit and consider information regarding the care and treatment of the child from any foster parent, pre-adoptive parent, or relative providing care for the child who appears for the hearing.

Comments - 2012

(a) See Comment (a) to Article 623 for Paragraph C's compliance with Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

(b) Additionally, Article 680 requires the court to consider any and all evidence presented by the child during the disposition hearing, implying the child's presence. It also reflects the growing national trend for states to grant children the right to be present in court. *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These changes are consistent with the A.B.A. Model Act Governing the Representation of Children in Abuse Neglect, and Dependency Proceedings adopted in August, 2011.

(c) See Comment (b) to Article 623 for Paragraph D's compliance with the Safe and Timely Interstate Placement of Foster Children Act of 2006, 42 U.S.C. 601 et seq., P.L. 105-89.

(d) See Comment (b) to Article 623 for Paragraph F's compliance with the Safe and Timely Interstate Placement of Foster Children Act of 2006, that requires that "the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, *and a right to be heard in*, any proceeding to be held with respect to the child." 42 U.S.C. 675(5)(G) (emphasis added). In particular, it clarifies the foster parent or caretaker's right to be heard. It also emphasizes the role of the child's daily caretaker and the insight that the care taken can provide. See Article 695.

\* \* \*

Art. 695. Notice; **foster parents, pre-adoptive parents, relatives providing care;**

right to be heard

A. The department shall give notice of the right to appear at each case review hearing to any foster parent, pre-adoptive parent, ~~adoptive parent~~, or relative providing care for the child.

B. The notice shall state the ~~day~~ **date**, time, and place of the case review hearing and the recipient's right to attend and be heard.

C. If a foster parent, pre-adoptive parent, ~~adoptive parent~~, or relative providing care for the child fails to appear at a case review hearing, the department shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

**D. The court shall solicit and consider information regarding the care and treatment of the child from any foster parent, pre-adoptive parent, or relative providing care for the child who appears for the hearing.**

Comment - 2012

See Comment (b) to Article 623 for Paragraph D's compliance with the Safe and Timely Interstate Placement of Foster Children Act of 2006. It also emphasizes the role of the child's daily caretaker and the insight he can provide.

Art. 696. Rights of parties

\* \* \*

**B. A child twelve years of age or older shall be present in court unless his presence is waived by the court upon motion of the child's counsel. A child**



below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If the child is present in court, he may choose to testify as to his wishes, and the court shall consider his testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents.

~~B. C.~~ Any party who has received notice of the case review hearing and does not appear shall be deemed to have waived his right to be present.

Comments - 2012

(a) See Comment (a) to Article 623 for Paragraph B's compliance with Louisiana Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

(b) Additionally, the rights provided to a party in Paragraph A of this Article require a presumption that the child be present during the hearing. It also reflects the growing national trend for states to grant children the right to be present in court. *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These changes are consistent with the A.B.A. Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings adopted in August, 2011.

\* \* \*

Art. 702. Permanency hearing

\* \* \*

J. In the case of a child ~~who has attained age sixteen~~ **fifteen years of age or older**, the hearing shall ~~determine the services needed to assist the child to make the transition from foster care to independent living~~ **include a review of the transitional plan developed with the child and the agency in accordance with Subparagraph (B)(3) of Article 675.**

Comment - 2012

See Comment to Children's Code Article 675.

\* \* \*

Art. 705. Notice; right to be heard

A. The department shall give notice of the right to appear at each permanency hearing to any foster parent, pre-adoptive parent, ~~adoptive parent~~, or relative providing care for the child.

B. The notice shall state the ~~day~~ date, time, and place of the permanency hearing and the recipient's right to attend and be heard.

C. If a foster parent, pre-adoptive parent, ~~adoptive parent,~~ or relative providing care for the child fails to appear at a permanency hearing, the department shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

**D. The court shall solicit and consider information regarding the care and treatment of the child from any foster parent, pre-adoptive parent, or relative providing care for the child who appears for the hearing.**

Comment - 2012

See Comment (b) to Article 623 for Paragraph D's compliance with the Safe and Timely Interstate Placement of Foster Children Act of 2006. In particular, it clarifies the foster parent or caretaker's right to be heard. It also emphasizes the role of the child's daily caretaker and the insight that he can provide. See Article 695.

## Art. 706. Rights of parties

\* \* \*

**B. A child twelve years of age or older shall be present in court unless his presence is waived by the court upon motion of the child's counsel. A child below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If the child is present in court, he may choose to testify as to his wishes, and the court shall consider his testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents.**

~~B.~~ C. Any party who has received notice of the dispositional review hearing and does not appear shall be deemed to have waived his right to be present.

Comments - 2012

(a) See Comment (a) to Article 623 for Paragraph B's compliance with Louisiana Supreme Court Rule 33, Part III, Subpart II, Section 1, Standard 12.

(b) Additionally, the rights provided to a party in Paragraph A of this Article

require a presumption that the child be present during the hearing. It also reflects the growing national trend for states to grant children the right to be present in court. *A.B.A. Ctr on Youth and the Law, Bar-Youth Empowerment Project (2009)*. These changes are consistent with the A.B.A. Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings adopted in August, 2011.

\* \* \*

Art. 776. Permanency planning reports

\* \* \*

B. When the ~~department~~ **Department** of Public Safety and Corrections is the custodian, the provisions of Chapter 15 of Title VI shall be applicable only as provided in Article 907 **and Article 908(C)**.

Comments - 2012

(a) The development of a transitional plan in collaboration with a child fifteen years of age or older transitioning from foster care to independent living was mandated by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). Inclusion of specific health care options in the plan is mandated by the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148).

(b) The transitional plan form developed and used by the Department of Children and Family Services and by Youth Services, Office of Juvenile Justice is available on the agencies' websites.

\* \* \*

Art. 853. Effect of nonappearance by a parent

If it appears from the record that the parent has been served in accordance with Article 849 or 852 and summoned to any hearing, or cannot be found, and the parent fails to appear, the hearing may be held in the parent's absence. ~~Should the court decide to proceed, it may appoint a Court Appointed Special Advocate in accordance with Article 424 for the child.~~ The court shall appoint counsel for the child if neither parent appears.

\* \* \*

Art. 908. Care and treatment by ~~Department of Public Safety and Corrections~~ **department**

\* \* \*

C. **At least six months prior to the release of the child, the department shall prepare a written, individualized, and thorough transitional plan developed in collaboration with the child and any agency or department**

assuming his custody, care, or responsibility.

(1) The plan shall identify the programs, services, and facilities that will be used to assist the child in achieving a successful release from the department's custody.

(2) A copy of the transitional plan shall be provided to the court, counsel for the child, and the district attorney.

(3) The transitional plan shall address the needs of the child, including but not limited to education, health, permanent connections, living arrangements, independent living skills, and employment.

(4) The department shall ensure that all records in its files relevant to securing needed services in the community in which the child will live shall be immediately transmitted to the appropriate service provider.

**D.** The court shall not divide legal and physical custody of a child when assigning custody to the department in accordance with this Article or in accordance with any other statute or provision of law.

Comments - 2012

(a) Transition plans were originally required only for youth who had been adjudicated delinquent for an offense listed in Article 897.1. Transitional plans are now mandated for all youth in the custody of the Office of Juvenile Justice.

(b) The transitional plan form developed and used by the Department of Children and Family Services and by Youth Services, Office of Juvenile Justice, is available on the agencies' websites.

\* \* \*

Art. 1015. Grounds

The grounds for termination of parental rights are:

\* \* \*

(3) Misconduct of the parent toward this child or any other child of the parent or any other child ~~in his household~~ which constitutes extreme abuse, cruel and inhuman treatment, or grossly negligent behavior below a reasonable standard of human decency, including but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit any of the following:

\* \* \*

1 (k) The parent's parental rights to one or more of the child's siblings have  
 2 been terminated due to neglect or abuse, ~~and~~ prior attempts to rehabilitate the parent  
 3 have been unsuccessful, **and the court has determined pursuant to Article 672.1,**  
 4 **that current attempts to reunite the family are not required.**

5 \* \* \*

6 Art. 1030. Suspension of right of voluntary surrender of parental rights by initiation  
 7 of termination proceeding

8 Once a petition to terminate parental rights has been filed, the parent is  
 9 thereafter without authority to execute an act of surrender or otherwise to affect the  
 10 custody of the child except:

11 \* \* \*

12 (2) The parent may consent to a judgment terminating his parental rights as  
 13 provided in Article ~~1033~~ **1025.2.**

14 \* \* \*

15 Art. 1211. Final decree at first hearing

16 Notwithstanding Article 1216, upon the consideration of the factors  
 17 enumerated in Article 1208(B), the court may render a final decree of ~~private~~ **agency**  
 18 adoption at the first hearing without the necessity of first entering an interlocutory  
 19 decree, if either:

20 \* \* \*

21 Section 2. Children's Code Article 730(10) is hereby repealed in its entirety.

\_\_\_\_\_  
 PRESIDENT OF THE SENATE

\_\_\_\_\_  
 SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_